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Rights of the Child

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COMMITTEE ON THE RIGHTS OF THE CHILD

Twentieth session

SUMMARY RECORD (PARTIAL) OF THE 506th MEETING*

Held at the Palais des Nations, Geneva,
on Monday, 11 January 1999, at 10 a.m.

Chairperson: Miss MASON

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* No summary record was prepared for the rest of the meeting (closed).

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.99-40107 (E)

The meeting was called to order at 10.30 a.m.

OPENING OF THE SESSION

1. The CHAIRPERSON declared open the twentieth session of the Committee.

STATEMENT BY THE HIGH COMMISSIONER FOR HUMAN RIGHTS

2. Mrs. ROBINSON (United Nations High Commissioner for Human Rights) wished the Committee every success in its work during the twentieth session and recalled that 1999 was the tenth anniversary of the Convention on the Rights of the Child, the tenth anniversary of the World Summit for Children, and the fiftieth anniversary of the Geneva Conventions. She earnestly hoped that efforts to achieve universal recognition and implementation of the rights of the child would redouble in 1999. Human rights, and children's rights in particular, should become an explicit objective for the twenty-first century, and should give rise to heightened awareness throughout the world.

3. Children always paid an inordinately high price during periods of armed conflict; in that regard, she commended the Committee for its decision to hold a meeting with the Special Representative of the Secretary-General on the impact of armed conflict on children. Plans had also been made for the Security Council to hold a public debate in June 1999 on the matter of children in armed conflicts.

4. She praised the Committee for its various activities and commended UNICEF for its efforts to implement the Convention; she wished to pay her particular respects to Miss Mason, who had been a member of the Committee since its inception, and its Chairperson since 1997. She assured the Committee that it enjoyed her personal support, and promised to do her utmost to mobilize the resources it needed to carry out its task properly.

5. To commemorate the anniversary year, she was working on a project for a workshop which could perhaps be held during the twenty-eighth session, and which would have the following theme: "The Convention on the Rights of the Child: Ten years of achievements and challenges." Her discussions with the members of the Committee in preparation for that workshop were sure to prove very fruitful. She was also contemplating the publication of a text which would discuss legislative aspects of the history of the Convention.

6. Finally, she called on all persons involved in the implementation and monitoring of the principles and provisions of the Convention to come up with creative ideas for events and projects on behalf of children to commemorate the anniversary year. The year 1999 would also mark a turning point if the draft ILO Convention aimed at prohibiting the worst forms of child labour was adopted.

7. The CHAIRPERSON invited the members of the Committee to make comments.

8. Mr. KOLOSOV said it was important to note that the formulation and adoption of a draft optional protocol to the Convention on the Rights of the Child, with regard to the involvement of children in armed conflicts, fell within the competence of the States parties to the Convention and not within

that of the Working Group of the Commission on Human Rights constituted for that purpose. He hoped that matter would be taken up at the meeting of States parties to the Convention to be held on 16 February 1999, so that the procedures could be revised accordingly.

9. Mrs. ROBINSON (High Commissioner for Human Rights) said that she was well aware of the importance of that matter, and informed the Committee that the Deputy High Commissioner was scheduled to meet representatives of the Working Group to discuss that subject. For her part, she would do her utmost to ensure that the work of formulating the optional protocol would be carried through to a successful conclusion as promptly as possible.

10. Mr. KOLOSOV said that the International Herald Tribune had recently reported that certain countries intended to use young boys as human mine detectors, heightening his sense of alarm.

11. Mrs. ROBINSON (High Commissioner for Human Rights) assured the Committee that she would not fail to broach that grave matter with the Special Representative of the Secretary-General on the impact of armed conflict on children.

12. The CHAIRPERSON thanked Mrs. Robinson for her good wishes for the success of the Committee's work. She sincerely hoped that the drafting of the optional protocol would be completed within the year. For its part, the Committee would, as usual, strive to ensure that States parties fulfilled their obligations under the Convention. In that regard, Barbados would unfortunately be unable to present its initial report to the Committee on the date scheduled because national elections were to be held the same day. The consideration of its report would therefore be deferred to the next session.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CRC/C/81)

13. The agenda was adopted.

SUBMISSION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH ARTICLE 44 OF THE CONVENTION (agenda item 3)

14. Mr. DAVID (Secretary of the Committee) said that, since its previous session, the Committee had received the initial reports of Liechtenstein, Saudi Arabia, Palau, Latvia and the Dominican Republic and the second periodic reports of Guatemala, Ethiopia, Portugal, Paraguay and Lebanon, bringing the number of initial reports received to a total of 131, and the number of second periodic reports received to 20. Ninety-three reports had been considered; 51 initial reports and 87 periodic reports were overdue.

The part of the meeting covered in the summary record ended at 10.50 a.m.

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4)

Initial report of Austria (CRC/C/11/Add.14; HRI/CORE/Add.8; CRC/C/Q/AUSTRIA/1 (list of issues); written replies of the Austrian Government to the questions raised in the list of issues (in-session document with no symbol, in English only))

1. At the invitation the Chairperson, Mr. Cede, Mr. Schütz, Mr. Filler, Ms. Jellinek, Ms. Kisser, Mr. Stormann and Mr. Siedler (Austria) took places at the Committee table.

2. Mr. CEDE (Austria), introducing the delegation of his country, said he wished to point out an unusual circumstance: Mr. Siedler, a youth representative who belonged to the Austrian Student Federation, would participate in the discussion. He also wished to reaffirm his country's commitment to the implementation of the Convention; in that regard, Austria, a 12-year member of the Commission on Human Rights, had taken a number of initiatives on behalf of children, and in particular in the area of juvenile justice. He was pleased by the large number of States that had ratified the Convention, which was now virtually universal in scope. With regard to the protection of children's rights, the Austrian authorities were endeavouring, within the framework of both national and European initiatives, to combat all forms of sexual abuse, including the dissemination on the Internet of pornographic materials showing images of children. Efforts had been undertaken to draft and negotiate an additional protocol to the Convention which would cover the use of images of children in pornographic materials disseminated through modern telecommunication methods. Although the initial report of Austria had been prepared in 1996, the Committee would find new information in the written replies, which had been formulated recently and were as comprehensive as possible.

3. Mr. SCHÜTZ (Austria) said he was particularly pleased to participate in the deliberations of the Committee since he had taken part in the Working Group that had drafted the Convention. Before ratifying that instrument, the Austrian Government had, at the request of the national assembly, engaged the services of independent experts to identify any possible conflict between the Convention and national law. No legal contradiction had emerged at that time, which did not mean that the Government deemed it unnecessary to improve the situation of children in various areas of national policy: it considered the Convention to be a set of minimum rules. The Committee, by its very existence, had galvanized the formulation of relevant policies. The Penal Code had accordingly been amended in 1994 by the addition of section 207 bis, which established criminal sanctions for not only the production and dissemination, but also the acquisition and possession of pornographic materials using images of children under the age of 14. In addition, the Penal Code had again been amended in 1996 to address the matter of sexual tourism; accordingly, Austrians who normally resided in Austria and who committed abuses against children fell within Austrian criminal jurisdiction even if such abuses took place abroad. Another amendment to the Penal Code had entered into force in October 1998, providing that for cases of sexual abuse, statutory limitations began to apply only after the victim had attained

the age of majority. The situation of children involved in criminal proceedings had improved considerably, since arrangements could now be made for less stressful hearings to be held outside the courts with the assistance of psychologists; that practice was obligatory for victims under the age of 14, and could be requested by a child aged 14 or over. National legal provisions regarding sexual offences were the subject of an ongoing evaluation conducted by working groups in the Ministry of Justice, whose task was to formulate proposals for reform.

4. Turning to matters of civil law, he said that the Government planned promptly to reduce the age of majority from 19 to 18, and envisaged measures to ensure that a child's views would be given a better hearing. For example, the courts would be able to intervene in cases where a child agreed to follow a course of medical treatment which his parents opposed, and a child would have the right to be in close contact with members of his family who were not immediately responsible for him. Reforms should be made which would allow children capable of forming their own views to address the courts in their own right and to lodge appeals without the assistance of a legal representative. The Ministry of Justice was preparing a proposal which would be transmitted to other relevant Ministries for their views, and then to the Council of Ministers for approval and to the Parliament for adoption. Furthermore, a law specifically providing protection against violence in the family had entered into force in 1997; it enabled the police to expel a violent parent from the home; allowed the victims, namely, the other parent and the children, to remain in the home; and protected them from threat.

5. Ms. JELLINEK (Austria) said that the situation of foreigners, and in particular foreign children, on Austrian soil had been considerably improved by the entry into force of a new law regarding foreigners, a new law regarding asylum, and amendments to the nationality law. The new law regarding foreigners, which had entered into force in January 1998, provided that foreigners who had been born in Austria, or who had arrived on Austrian soil before the age of 3 and had been brought up in Austria, even if they had not applied for Austrian citizenship or if they had committed offences, could not be barred from remaining in the country. As a general rule, the longer a foreigner had resided in Austria, the greater his protections under the law. Thus, a foreigner who had lived longer than five years on Austrian soil could not be denied permission to remain or be expelled from the country, even if he lost his job. If he committed an offence, whether or not he was denied leave to remain depended on how long he had resided in Austria. In addition, immigrants enjoyed the right to family reunification. More specifically, a foreigner who had immigrated in 1998 had the right to bring into Austrian territory his spouse and any children under the age of 19; and a foreigner who had immigrated before 1998 had the right to bring in his spouse and any children under the age of 14. In both cases, a quota had been set, but the new law on foreigners provided that the decision must apply to the whole family: in future it would not be possible to accept a foreigner while at the same time refusing his children. In addition, a wholly new provision to the law regarding foreigners established that a minor could only be held in custody pending an expulsion decision as a last resort. Finally, the law concerning nationality had been amended to allow for an unaccompanied minor to

apply for Austrian citizenship after having resided in the country for four years. He could do so beginning at the age of 14, even if his legal representative was opposed.

6. Mr. SIEDLER (Austria) said that participation by pupils and students in school and university life was entirely obligatory in all the federal states. In the secondary schools, each class chose a representative whose role was to discuss with teachers any problems that might arise. Another representative elected by the entire school body, had the task of facilitating the relationship between pupils, teachers, and the school principal. In the universities, student representatives elected at the state level participated in a higher council. That council chose one of its members to represent all Austrian students at meetings conducted by the educational authorities.

7. Mr. CEDE (Austria) pointed out that NGOs, some of which had formed associations for that purpose, played a crucial role in the implementation of the Convention.

8. The CHAIRPERSON thanked the members of the delegation of Austria for their statements and invited the members of the Committee to raise questions concerning general measures of implementation.

9. Mr. FULCI observed with satisfaction that the report of Austria had been prepared in accordance with the Committee's guidelines, greatly facilitating its consideration of the implementation of the Convention in that country. He nevertheless noted with concern that there was no single independent body responsible for monitoring the practical application of each of its articles. That lack was probably attributable to two factors, the federal structure of the country, and the fact that the Convention was not directly enforceable under the national law. Furthermore, the involvement of civil society, and in particular NGOs, in the implementation of the Convention appeared to be inadequate; in his view, greater efforts should be made to enhance public awareness of the objectives of the Convention. Although he commended the Austrian Government for having included Mr. Siedler, the student representative, in the delegation, he regretted that the executive and legislative branches were unrepresented.

10. Mrs. PALME said that she had read with great interest the initial report of Austria, which well described, in the general sense, the way in which the authorities were fulfilling their responsibilities under the Convention. In that regard, she noted that the Austrian legal system had undergone important reforms with regard in particular to the punishment of sexual offences. And yet, since the provisions of the Convention were not directly applicable under domestic law, and since the federal authorities carried out a policy of decentralization which could hinder coordination at the central level, she found it necessary closely to scrutinize that country's implementation of the Convention. It would be useful to know how budgetary reductions in social programmes would affect children and if the special support programmes for children would not, in fact, make children an isolated group within society. She wondered whether the budgetary cuts had already brought about a decline in teacher/pupil relations.

11. Mr. RABAH said he would like clarifications concerning the lack of compatibility between the Convention on the Rights of the Child and the European Convention on Human Rights, which had been invoked to justify the reservations entered by Austria in respect of articles 13 and 15 of the Convention. It would also be useful to know whether NGOs had participated in the preparation of the initial report and whether the Convention had been translated into the languages of ethnic communities living in Austria.

12. Mrs. OUEDRAOGO welcomed the balanced, instructive nature of the report, and regretted that no information had been supplied regarding the ministries or NGOs that had participated in its preparation. She wondered whether there were particular reasons for the late submission of the report.

13. There was every reason to welcome the unanimous adoption by Parliament of resolution E 156-NR XVIII.GP, containing a catalogue of the measures taken to implement the objectives set out in the Convention; she would like to know if specific time-limits had been set for the accomplishment of those objectives. With regard to the status of the Convention under domestic law and new national legislation, she observed that the Austrian Constitution envisaged two alternatives: one, the transformation of international law into national law; and two, the integration of international law into national law, subject to the adoption of laws necessary for the application thereof in the country. It would be useful to know under which of those systems the Convention fell. She also noted that there were still areas in which the national legislation was not wholly in accordance with the Convention, and in particular the right to family reunification and the rights of child asylum seekers and refugees. If the proposal of elaborating a special federal constitutional law on the protection of children and adolescents, discussed in the written replies provided by the delegation, were to be retained, what would be the status of its provisions in relation to the Constitution, and what would be their sphere of application? Recalling that the Committee on Economic, Social and Cultural Rights had recommended the adoption of measures that would place international human rights instruments on an equal footing with the European Convention on Human Rights in the domestic legal order, she inquired what steps, if any, had been taken.

14. Mrs. KARP commended the Austrian Government for the initiative it had undertaken, in collaboration with the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna, to establish and strengthen juvenile justice administration systems at the national level. She also praised Austria for having been one of the first countries to ban corporal punishment in the family. She too would welcome clarifications concerning any discrepancies between the Convention on the Rights of the Child and the European Convention on Human Rights, since in her view those two instruments had entirely similar objectives. She did not understand the reservation entered in respect of article 17, which correctly envisaged that States parties should encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being.

15. She would also like to know how the same protection could be guaranteed, in all spheres, to children in different federal states, in the absence of a central coordinating body. It was her impression that some States had better

programmes for the implementation of the Convention and that ombudsmen had a larger role in some States than in others. To what extent were NGOs involved in the formulation of reports submitted to the Committee and in the implementation of the Convention? The Austrian delegation should also describe measures undertaken by the Government to implement economic, social and cultural rights to the maximum extent of their available resources, as provided in article 4 of the Convention. She would also like to know, in that context, whether children, and especially those in disadvantaged circumstances, had suffered from the cuts in social spending. Lastly, the Austrian Government should indicate whether the Government was planning to increase its official development assistance contribution to 7 per cent of gross domestic product and whether the Government ensured that such assistance served the needs of children.

16. Mrs. MOKHUANE said she would like clarifications on the roles of ombudsmen for children and adolescents, child protection representatives, and social workers who dealt with children. Did the Government envisage increasing its subsidies to NGOs to assist them in making a greater contribution to the work of implementing the Convention?

17. Mr. KOLOSOV asked whether the State party's report had been translated into German, whether the federal authorities had the right to oversee the manner in which the states legislated in matters of the rights of the child, whether such laws differed from state to state, and whether, in the view of the delegation, the introduction of a single European currency might have a negative impact on children, especially children in disadvantaged circumstances.

The meeting was suspended at 11.45 a.m. and resumed at 11.55 a.m.

18. Mr. FILLER (Austria) said that the Federal Ministry of the Environment, Youth and the Family had requested all federal ministries, state governments, NGOs and ombudsmen for children and adolescents to transmit to it their observations concerning the implementation of the Convention. The initial report of Austria was in fact a synthesis of all the comments that had been received. In addition, the German version of the initial report was available and would be published along with the Committee's recommendations in the near future. The Government was attempting, for its part, to have the Convention translated into the languages of the various ethnic minorities, but it had come up against a number of linguistic obstacles. For example, the language spoken by the Croatian minority differed perceptibly from official Croatian, and the language spoken by the Sinti was a non-written one.

19. Turning to the matter of social expenditures, he said that the Government had indeed reduced family allowances in 1995, but that they had been raised in 1999 and would be again in 2000, fully compensating for the previous cut. According to the OECD, the Austrian system of allowances for families and children was one of the best in the world. Furthermore, NGOs were closely involved in the implementation of the Convention and subsidized by the State. For example, a large NGO association for the protection of children, the Bundesjugendring, received 100 million Austrian schillings from the State each year, which it generously distributed among the various NGOs that formed part of it.

20. Given the federal structure of Austria, the legal mandates of ombudsmen for children and adolescents differed from state to state. The federal authorities could request ombudsmen to cooperate with them but could not impose any control over the way in which they carried out their task on behalf of children. It was worth pointing out in that context that a number of NGOs were not in favour of creating a centralized federal system to monitor the implementation of the Convention.

21. With regard to the incorporation of the rights of the child into constitutional law, such a measure in fact figured on the list of objectives set out in resolution E 156-NR XVIII.GP, adopted by Parliament. Before taking a decision in that regard, however, the Government was waiting for the political and legal debate on that question to conclude. According to a study conducted by the Federal Ministry of the Environment, Youth and the Family in cooperation with the ombudsmen for children and adolescents, which would be published on 26 January 1999, efforts should be made to increase the participation of youth in the country's political life. At Austria's initiative, the European Union had, in fact, adopted a text addressing that subject. Although institutions for children fell within the competence of the federal states, the Federal Government devoted considerable sums to their development (1.2 billion schillings in 1997 and 1998). In addition, the social integration of disabled persons counted among the objectives listed in the resolution adopted by Parliament. A number of measures had been taken to facilitate the integration of disabled children into regular schools and kindergartens. Family allowances for disabled children were also larger than regular family allowances.

22. In that resolution Parliament had also recommended that efforts should be undertaken to combat violence in society, in the home, and in the media. In that regard, a system had been established to provide parental guidance for films shown on television. A plan of action had also been adopted, in collaboration with Internet servers, to combat child pornography. The Penal Code, paragraph 2078, criminalized the acquisition, possession and distribution of pornographic materials showing images of children.

23. The final point of that resolution dealt with the matter of children facing the divorce or separation of their parents. In response to the recommendations contained therein, the Federal Ministry of Justice, in cooperation with the Federal Ministry of the Environment, Youth and the Family, had drawn up a proposal for the establishment of family counselling, mediation and guidance services, to provide support for parents and children in such situations. The proposal had been successful, and the results had served as the basis for a reform of the family law, which naturally emphasized the best interests of the child. The resolution also contained recommendations on measures to combat sexual tourism involving children as victims. As a response to one of those recommendations, video cassettes had begun to be shown in aeroplanes travelling to countries where sexual tourism was practised, a project conducted by the Federal Ministry of the Environment, Youth and the Family in cooperation with the Commission of the European Communities.

24. Mr. STORMANN (Austria), replying to questions raised by members of the Committee on the possible disparities in the situation of children from one

state to another, indicated that the Austrian federal system, as set out in the Federal Constitution, was indeed designed to protect citizens against that sort of discrimination. Thus, although the decision whether to adhere to an international instrument fell to the federal legislative authorities, once it had been ratified, all the federal states were under an obligation to implement it. That was therefore the case with the Convention on the Rights of the Child, which was equally applicable in all the states. Although the establishment of general legislation regarding the protection of children and youth fell to the federal legislature, the details of its local application were left to the discretion of the federal states. Thus the framework of Austrian social policy on children and youth was the same in all the federal states. The Federal Constitution, moreover, provided for a strict system of reciprocal control and supervision over the legality and constitutionality of legislative texts adopted by each of the states as well as by the Federation itself. The administration of the states was nevertheless entrusted to the states themselves and the Federal Government was not empowered to intervene, even for political reasons. Accordingly therefore, although children had the same status in all the federal states, significant differences could exist, inter alia, in the level, responsibilities and remuneration of the ombudsmen for children and adolescents, who were appointed by the states. Every effort was made to ensure that children did not suffer from those disparities, however.

25. At the time of its ratification of the Convention, the Government had not deemed it necessary to incorporate that instrument into Austrian constitutional law because not only had the independent experts responsible for assessing its compatibility with the federal legislation concluded that domestic law was fully in harmony with its provisions, but the federal authorities had determined that it was unwise further to burden the constitutional system, rendering more difficult the task of the courts that were responsible for implementing the law.

26. Ms. KISSER (Austria) said that Austrian legislation had been modified to increase the allowances paid to children from families that were badly off, with a view to providing equal educational opportunities to all young people. The start of the 1998-1999 school year had admittedly been marked by teacher strikes brought about by changes in the law that regulated their salaries. After negotiations among the Ministry of Education, the student unions, and parent representatives, an agreement had been reached which had brought an end to the strike. The Minister of Education had promised to recruit more teachers and to reduce bureaucracy at the state level, and had pledged to maintain a high educational standard in all school establishments.

27. The Ministry of Education worked closely with NGOs made up of parents and school representatives; there were many NGO associations which contributed to the efforts made by the Ministry to improve the quality of education in the country. One of the NGO associations had prepared a brochure for children containing the text of the Convention in simplified form, which helped children to understand their rights in concrete terms.

28. Mr. SIEDLER (Austria) said that teachers had struck at the start of the year to protest against staff shortages and inadequate salaries. The strike had naturally interfered with the teaching schedule. Although the situation

for the most part had returned to normal, the atmosphere in schools remained tense, because students felt they had borne the brunt of a conflict between teachers and the Ministry of Education which had nothing to do with them. When situations of that kind arose, all pupils, rich and poor, suffered from the disruption of their studies.

29. Mr. SCHÜTZ (Austria) said, with regard to social benefits for children, that under the Austrian system, the Government guaranteed the provision of financial resources for the maintenance and education of children. When a court rendered a divorce or separation decision, and the parent who was required to pay child support was unable to do so, the Government advanced the necessary sum for maintenance and education, which the parent was required subsequently to reimburse. The latest figures indicated that, of the total amount paid out by the Government, 45 per cent had been paid back by parents and that 55 per cent therefore was an official Government expense. In any event, the authorities attended to the protection of children's rights as a matter of priority, regardless of the financial status of their parents.

30. Mr. CEDE (Austria), replying to the question raised about Austria's reservations in respect of articles 13 and 15 of the Convention, said that when that instrument had been ratified, the Austrian experts had considered that the wording of the articles in question, which established certain restrictions on the exercise of the right to freedom of expression and freedom to seek, receive and impart information, was not wholly compatible with the wording of articles 10 and 11 of the European Convention on Human Rights. At that time, the European Convention on Human Rights had already formed part of Austrian domestic law, and the Government had consequently considered it necessary to avoid any clash between its obligations under those two instruments. The delegation nevertheless took due note of the remarks made by the members of the Committee regarding Austria's reservations to the Convention, and would communicate them to the Government, taking into account as well the recommendation contained in the Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna in 1993, which called on States to re-examine their reservations with a view to their withdrawal.

31. The CHAIRPERSON thanked the delegation of Austria for its replies to the initial questions raised by the members of the Committee concerning the implementation of the Convention in that country.

The meeting rose at 1 p.m.

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COMMITTEE ON THE RIGHTS OF THE CHILD

Twentieth session

SUMMARY RECORD OF THE 508th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 12 January 1999, at 3 p.m.

Chairperson: Miss MASON

CONTENTS

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of Austria (continued)

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GE.99-40115 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Austria (CRC/C/11/Add.14; HRI/CORE/1/Add.8; CRC/C/Q/AUSTRIA/1; written replies of the Government of Austria to the questions raised in the list of issues) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Austria took places at the Committee table.

2. The CHAIRPERSON invited the members of the delegation to continue answering the questions asked at the previous meeting.

3. Mr. CEDE (Austria) said that the establishment of a new monetary order throughout the European Union would stabilize the exchange rate and reduce public spending deficits, to the benefit of all strata of society, including children. Although no particular study had been envisaged which would assess the effects of the euro on children per se, there was no doubt that it would prove beneficial to them.

4. Mr. FILLER (Austria) said that the Austrian Division for International Funds supported a variety of international programmes benefiting children, including one which aimed at reducing child labour, one which provided support to the office of the High Commissioner for Refugees in Kosovo, and one which assisted street children in Romania. A number of new programmes had been established within the context of the International Year for Human Rights, including one which provided assistance to unaccompanied refugee children. He would transmit Mrs. Karp's proposal to the members of that Division, who were deeply interested in programmes to benefit children in developing countries.

5. The CHAIRPERSON, having invited the members of the Committee to ask questions concerning the sections of the list of issues entitled "General principles" and "Civil rights and freedoms", asked Mr. Siedler, the student member of the Austrian delegation, whether Austrian children were aware of the existence of the Convention and to what extent they were able to make use of its principles and provisions on their own behalf.

6. Mr. SIEDLER (Austria) said that most Austrian children were unaware of the Convention and therefore unable to make use of it. That was not, however, a serious problem in the schools, since pupils enjoyed many rights and, although they were not permitted to make decisions, they did contribute to the decision-making process.

7. The CHAIRPERSON said that those children who were aware of the existence of the Convention had the important responsibility of informing other children of their rights. That was particularly so, for instance, in the case of child aliens, children in care, and children in detention.

8. Mr. FULCI asked the student member of the delegation how he had first learned of the Convention, what his own reaction and that of other children

had been and whether learning of the Convention's existence had been a significant event. It would also be useful to know how he had become a member of the delegation.

9. Mrs. KARP, rephrasing a question she had put at the previous meeting, asked how the Convention on the Rights of the Child and the European Convention on the Exercise of Children's Rights coexisted in law and practice. In some areas, for instance, the European Convention was more restrictive. In particular, she wished to know whether the Convention on the Rights of the Child, as a United Nations instrument, was accorded a higher status than the corresponding regional one.

10. She would also like to know what steps were taken to ensure the participation of children in institutions that were not dependent on the Ministry of Education, such as, for instance, institutions providing care. What mechanisms existed, if any, to ensure that children's views and complaints could be heard and addressed in matters that concerned them?

11. The age of sexual consent, at 14, was perhaps acceptable if it referred to relations between children of the same age, but she wished to know how children of that young age were protected from abuse and exploitation by older persons. In that connection, she inquired whether it was an offence in Austria to frequent a prostitute aged under 18. Some 26 per cent of the children currently being born in Austria were born out of wedlock and it would be interesting to know whether there was any connection between that high figure and the low age of sexual consent.

12. The European Parliament had recently urged the States members of the European Union to standardize the age of consent to homosexual relations and she wondered whether Austria, where that age was set at 14 for girls and 18 for boys, had taken any steps towards doing so. Setting a high age of consent for male homosexual relations was considered by some specialists to be injurious to the psychological development of boys.

13. Turning to the matter of non-discrimination, she said that the report of Austria referred to the equality of citizens but did not make it clear whether residents and inhabitants who were not citizens also enjoyed such rights.

14. Retarded girls were sometimes, it appeared, subjected to forced sterilization. Adults with disabilities could be obliged to undergo such a procedure only by an order of the court and the same protection should be extended to children.

15. The Committee would certainly like to know whether the Convention had been invoked in judicial or administrative proceedings in Austria. It would also like to know whether the views of children were genuinely heard in proceedings that concerned them and, more particularly, whether refugee children had a voice in the decisions regarding them.

16. Mrs. OUEDRAOGO said it would be useful to know how the delegation evaluated the current status of the Convention in its country. Was the Convention widely known? What was the view of children themselves with regard to the Convention? Could they put it to use to ensure their rights?

17. Since the Austrian Constitution referred to only some of the forms of discrimination set out in article 2 of the Convention, she would like to know by what means the Government ensured that persons would be protected from discrimination on the basis of race, colour, language, political or other opinion, national, social or ethnic origin, disability, or any other factor. Furthermore, she wondered whether the relevant constitutional provision applied to foreign residents in irregular situations and whether protection agencies provided assistance to both Austrian and non-Austrian children, including stateless children and unaccompanied refugee children.

18. Despite the various steps that had been taken to reform legal provisions that discriminated against children born out of wedlock, the term "illegitimate child" was to be found in the report. She wondered whether that term was still in general use in legal documents. If so, the Government should consider eliminating its use so as to avoid stigmatizing such children, both socially and legally.

19. Recalling that the Committee on Economic, Social and Cultural Rights had expressed concern regarding the remuneration of women in the Austrian private sector and regarding the limits placed on the number of foreigners authorized to work in Austria, she asked what steps, if any, the Government had taken to address those problems.

20. It would be useful to know whether any of the Austrian Government publications for children referred to provisions of the Convention and whether the "media education", referred to in the report was obligatory in Austrian schools.

21. She inquired what measures, if any, had been envisaged to protect a child's right to privacy - and in particular to maintain secrecy of correspondence - in cases where parents refused to acknowledge that right.

22. Lastly, since Austrian mothers had the right not to disclose the name of the fathers of their children, she would like to know by what means a child's right to know the identity of his or her father was guaranteed.

23. Mr. KOLOSOV said that it was essential to eliminate the term "illegitimate child" from all documents, since the word "illegitimate" meant "outside the scope of rights", or "not a subject of rights". The Convention specifically prohibited discrimination on the basis of origin: a child must not be blamed for the marital status of his or her parents.

24. Members of the Committee had mentioned the need to provide translations of the Convention for members of minority communities who spoke other languages. Translations of the Convention into many of those languages, including Czech, Hungarian, Slovenian and Slovakian, already existed, however.

25. Although Austria had established an ombudsman system for children and adolescents, it apparently depended on the Federal Ministry of the Environment, Youth and Family. To be effective, however, the ombudsman had to be wholly independent and empowered to express his views and initiate legislation.

26. Although the Governments of all States parties to the Convention asserted that the children in their countries were aware of the existence of the Convention, he had yet to meet a child, in his frequent travels, who expressed such awareness. The Governments should thus redouble efforts to inform children of their rights.

27. Lastly, he would welcome more information concerning the situation of refugee children in Austria.

28. Mrs. OUEDRAOGO, referring to the mechanism for coordination and implementation of the Convention, said that Austria's written reply had given a fragmented view of the various actions undertaken at the State, provincial and other levels. She wished to know what procedure would be used to establish a national plan based on those actions, so as to provide an overview of the efforts being made on behalf of children in Austria.

29. Mrs. PALME said that, while agreeing that it was rare for children under the age of 18 in Austria to perform voluntary or compulsory military service, as stated in paragraph 94 of the initial report, she would like to know whether there was any intention of removing the existing ambiguity as between 17 and 18 or simply of changing the minimum age itself.

30. Mr. KOLOSOV asked the delegation to give its own assessment - and, if possible, that of Austrian society as a whole - of the extent to which the quite positive child protection legislation was actually enforced in practice.

31. Mrs. KARP said that, in view of the fact that discriminatory inequalities could arise as a result of differences in the provision of services in the various sectors, she wondered whether the provision of child abuse protection, such as counselling and witness protection services, was equal throughout the country.

32. The difference between boys and girls regarding the legal age of marriage was also discriminatory and she wondered whether there were plans to harmonize it.

33. Since no age had been specified at which a child could seek medical counselling, she wondered whether there was any legislation under which children, especially adolescents, could seek specific medical treatment or counselling for drug abuse or other psychological problems without their parent's knowledge; whether doctors or counsellors were allowed to provide such treatment or advice, and whether the parents had any legal redress against the provision of such services.

34. She took issue with the use in the report of certain terms such as the "integration" of children with disabilities, which implied the need for such children to become like the rest of society, as opposed to the more modern term "inclusion", which implied, rather, that society catered to all people regardless of their differences. She asked whether any thought had been given not only to changing the vocabulary but also to promoting the ideas that underlay inclusion, especially with regard to education of the disabled.

35. The CHAIRPERSON said she was concerned about the legal age of sexual consent at 14 and its effect upon the protection of children from exploitation, especially in respect of pornography. On the subject of the capacity to perform legal acts, she inquired whether there was any age at which a child could lodge a complaint or seek redress before the courts without parental consent. Also, at a time when the stereotyping of occupations was universally denounced she would like to know whether girls were excluded from compulsory and voluntary military service and, if so, on what basis.

36. Mr. SIEDLER (Austria), replying to Mr. Fulci, said that while children were unfamiliar with the specific provisions of the Convention, they were certainly aware of their rights. While he could not remember precisely when he himself had learned of the existence of the Convention, he had certainly discovered at quite a tender age that there were rights to which he was entitled.

37. His presence on the delegation was the result of his membership of an elite children's group in one of the Länder in Austria, in which he held responsibility for international affairs. In that capacity, he had been working with Ms. Kisser, who had invited him to accompany her to the current session of the Committee as a representative of the children of Austria.

38. Mr. SCHÜTZ (Austria), replying to Mrs. Karp's question concerning the European Convention on the Exercise of Children's Rights, said that the Convention in question neither regulated substantive rights nor created new ones, nor did it contradict or overlap with the United Nations Convention on the Rights of the Child, the Council of Europe having taken the view that it would be inappropriate to grant rights without any effective means of enforcing them.

39. The Family Law Committee, taking article 4 of the Convention on the Rights of the Child as its starting point, had concluded that it would be more useful to seek an improved implementation mechanism through the Council of Europe rather than on a national basis. The purpose of the European Convention was thus to grant children additional procedural rights so as to enable them to exercise the rights they already enjoyed under the Convention on the Rights of the Child, especially with regard to custody and access.

40. The Family Law Committee's original idea of a precise implementation of children's procedural rights had met with considerable opposition, making it necessary for the new Convention to contain several cross-references to national legislation. Those very weaknesses and uncertainties had probably accounted for its failure to receive the requisite number of ratifications despite the fact that it had been open for signature for over two years.

41. The language used in the English translation of the Austrian initial report was sometimes imprecise, a case in point being the use of the discriminatory term "illegitimate" instead of "out-of-wedlock", the term invariably used in Austria.

42. There was no discrimination between children born in or out of wedlock, both categories enjoying the same substantive rights, including full equality

under Austria's inheritance laws. It was to be expected that, following the appearance of the new draft on the legal status of children, on which the Family Law Committee of the Council of Europe was currently engaged and from which all references to birth in wedlock and out of wedlock would be deleted, the member States would follow suit.

43. The high percentage of children born out of wedlock was due to changing realities and attitudes in a world - especially in Europe - where many couples lived together without marrying. It so happened that, in Austria, many such couples did marry after their children were born. The phenomenon was being studied by the Council of Europe and a Family Law Conference was to be held at the Hague in March 1999 to consider the legal aspects of registered partnerships.

44. Mr. STORMANN (Austria) said that it was not a recent trend in Austria for large numbers of children to be born out of wedlock. In some parts of the country, such as the Vorarl mountains, such children amounted to 50 per cent of all births. The reason was that, traditionally, a person did not marry until the family farm had been turned over to him by his parents. In any case, there was no distinction under civil law between children born in and out of wedlock. Under the law, paternity could even be acknowledged in advance of birth, giving the child in question a legal father although the parents were not married.

45. As to the age of sexual consent, it was 14 years according to the report but there had been some new developments in criminal law which set the new age of protection at 12 years. There were legal provisions to protect children from sexual exploitation, and the Criminal Court could intervene in cases of the abuse of authority.

46. Under Austrian law, the mother's right not to reveal the name of her child's father took precedence over the child's right to have a father. The case was entirely different in the case of artificial insemination, where the child had a personal right to know who his natural father was, even if his legal father was the husband or partner with whom his mother was living.

47. Concerning respect for the views of the child, on questions of education it was the obligation of the Family Court to ask the child for his opinion. The Court was obliged to do so personally in the case of children over 10 years of age; under that age, the Court could ask for the assistance of the Youth Welfare Authority or of experts. A similar provision was contained in the Youth Welfare Act to the effect that, if a child was placed by the Authority without the Court's intervention but with the consent of the parents, it was the duty of the Authority to seek the child's opinion. Any placement of a child, whether it involved the Court or the Authority, therefore required the child's opinion to be taken into account.

48. Replying to questions on medical treatment, he said that current Austrian law provided only for the possibility of children under 18 years obtaining medical advice from a doctor, without the consent of their parents or legal representatives, whereas any medical treatment did require such consent. None of the current legal provisions dealt explicitly with the

rights of the child, how parents should be involved in their children's medical treatment and whether children had the right to prevent their parents from being involved.

49. In general, the laws on medical treatment followed the principles of legal representation under civil law, but those provisions were manifestly insufficient and new provisions were to be proposed, prohibiting all medical treatment of a minor having the ability of discernment without his consent. As for the involvement of parents, some psychologists believed they should be excluded in cases where it would be dangerous for the child to discuss treatment with them, especially where sexual consent was an issue. On the other hand, there were those who argued that, under the European Convention on Human Rights, as interpreted by the European Court of Human Rights, the parents had to be involved. It was a very tricky matter.

50. For its part, the federal Ministry of Justice believed that medical treatment of a child with the capacity of discernment should depend on his consent alone, and not require any involvement by the parents. The draft legislation was to be sent for comment to the various government departments and non-governmental organizations (NGOs) dealing with children's interests and those comments would, it was confidently expected, support the Ministry's intention to assert the right of the child to decide on his own behalf.

51. As to what happened when a parent or other person with authority over a child harmed his welfare, the situation under the existing law was that anyone who was aware of such events was bound to inform the Family Court, whose duty it was to check on what had happened to the child. If the Court concluded that the child's welfare was in danger, it had to take adequate action to protect him. The new legislation would allow children over the age of 14 to file such claims on their own behalf, without the need for legal representation.

52. The procedure for access to the Family Court was quite easy. It was possible to meet a judge so as to receive legal advice. Judges helped to formulate claims, but clients were still free to choose a lawyer. That system, which brought judges close to the people, was very appropriate for children, who could speak to them personally. The problem still remained, however, of the representation of the child: if a second person were involved, he might act not in the child's interest but in what he believed that interest to be. It was therefore deemed better to change the provisions on family court procedures so as to help children act for themselves. Important new legislation was thus being drafted which would impose on the court the duty to provide minors with information to help them file their own claims and allow the child remedies up to the Supreme Court level. The target date for entry into force of the legislation was 1 January 2000.

53. Current provisions on the age of marriage, allowing women to marry much earlier than men, were being amended, whereby the age for men would be lowered to 18 and that for women to 16. Psychologists said there was no reason to change the principle that there was a difference between the sexes, as it was quite clear that females matured earlier than males. When, in 1984, the

Ministry of Justice had last tried to eliminate the age difference for marriage, there had been a nationwide uproar, so it would not be proposed again.

54. In any case, statistics showed that there were differences between the usual marriage age of men and women within the population. There were parts of the country where girls married very young, and yet the divorce rate was much lower than in other parts of the country, so it could not be concluded that early marriages were doomed.

55. Ms. JELLINEK (Austria), replying to a question about unaccompanied juvenile asylum-seekers, said that, under article 39 of the Asylum Act, the Office of the United Nations High Commissioner for Refugees (UNHCR) was informed of every request for asylum made in Austria, with special provisions applying to minor aliens. Minors with legal capacity and whose interests could not be safeguarded by their legal guardians could file requests themselves. An unaccompanied juvenile asylum-seeker could be interviewed only in the presence of his legal representative or a representative of the youth welfare office of the Land in which he was applying for asylum. Such persons were also entitled to housing and pocket money under the Aliens' Support Act and, if none were provided, they must be taken care of by the Länder social welfare institutions; they were not put out on the street.

56. In answer to a question on stateless minors, she said the Austrian Statelessness Act provided that children found on their own who were under six months of age were automatically granted citizenship. Unaccompanied minors or refugees could apply for citizenship after four years' residence. Persons born in Austria who would otherwise be stateless were granted citizenship under article 40 of the Act, and citizenship could be extended from parents to children if the parents applied therefor. Under the amended regulation that had come into force on 1 January 1999, children over the age of 14 could make their own applications. If a child's legal representative was not in favour of the application but it was deemed to be for the minor's benefit, the decision could be made by the Youth Welfare Authority.

57. Individuals who believed they had been discriminated against by the police could file complaints under the Police Authority Rules and apply first to the independent Administrative Tribunal, which would decide whether the rules had been violated, and afterwards to the Administrative Court.

58. Mr. FILLER (Austria), replying to questions about children's knowledge of the Convention, said some initiatives had been taken to make it known to large groups of people. There had been a postal stamp competition for students in 1992, which in theory made every citizen aware of children's rights. As children's rights were also embodied in the Austrian legal system, it was logical for them to know that their rights included those enshrined in the Convention.

59. In 1999, the Ministry of Education, together with the Ministry of the Environment, Youth and Family and the United Nations Children's Fund (UNICEF), was to initiate a monitoring system in schools, with pupils being asked

whether they were familiar with their rights, which rights they knew, where they felt under-represented, and which of their rights they felt were being violated. The results of that study would be presented in September 1999.

60. As for general initiatives to promote knowledge of the Convention, it was intended to make the text of the instrument, the initial report of Austria and the Committee's observations, as well as the second periodic report due in September 1999, available to a worldwide public, through the Internet.

61. Regarding budgetary incentives to harmonize the situation of children throughout the country, the issue had already been taken care of at the federal level, with the annual allocation of some Sw F 100 million for better provision of child-care centres nationwide, and considerable funds for running child-protection centres, which were also funded at the Land and municipal levels.

62. The prostitution of minors was forbidden by State regulations throughout the country. The Ministry of the Environment, Youth and Family had commissioned a study on the conditions leading youth into prostitution; that study, which had been completed, would shortly be made available to the public.

63. As to the extent to which the Convention was known to the courts, there was one case in which the Supreme Court had rendered a decision on the basis of the Convention. Moreover, since it was a part of the Austrian legal system, the Convention had led to a new interpretation of the existing Austrian regulation on visitation rights, whereby it was concluded that not only did parents have right of access but the child had also the right to personal contact with a non-resident parent. That case demonstrated that the Convention was quite widely known among legal practitioners and to the courts.

64. A member of the Committee had asked whether there was not some disharmonization of regulations nationwide as a result of the federal system. The harmonization of regulations was the role of the Länder ombudsmen and not of the federal State.

65. A working group was considering the question of the age of sexual consent. According to a study on youth prostitution, the criminal law was not enough to prevent young persons from engaging in prostitution; a series of adequate measures must be adopted, and services provided to ensure that young persons were given other opportunities.

66. Although translations of the Convention into some of the languages of the national minorities already existed, that resolved only part of the problem since some groups, while regarding themselves as belonging to a particular minority, seemed to believe that their language was different from that spoken in a neighbouring country. Consequently, if the local minority group was not satisfied by the official translation, it was necessary to arrange for a translation into its own everyday language.

67. Ms. KISSER (Austria) said that people no longer shared the earlier generations' prejudices against children born out of wedlock. The fact that such situations had become more prevalent in Austria was perhaps to be

attributed to the increasing independence of women. A number of "educational principles" had been introduced into school curricula, including sex education, the emancipation of women, and civic education in the concepts of rights and duties. While young people in Austria might not be fully aware of the Convention as such, they lived its principles daily.

68. The word "integration" had been introduced, after extensive discussion, to replace "assimilation" with a view to conveying a sense of the "inclusion" of many different peoples in Austrian society, and the tremendous asset that it represented. In connection with discrimination against foreign children, she had been disappointed by the reaction of the European Commission to a request that Bosnian child refugees in Austria should be permitted to participate in European Union youth programmes.

69. The CHAIRPERSON invited the members of the Committee to ask questions on the section of the list of issues entitled "Family environment and alternative care", together with the issues raised in the letter received by the Committee from Jan Rewers McMillan.

70. Mr. FULCI commended the pamphlet that had been published in Austria on the subject of the Convention and asked how many copies had been produced and how they had been distributed. It was unclear, however, to what extent young people in Austria were really aware of the existence of the Convention. Paragraph 253 of the initial report stated that the Hague Convention on the Civil Aspects of International Child Abduction and the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children, to which Austria was a party, were "very effective instruments in combating illegal transfer and non-return of children". That was most reassuring, since it was important that children should be spared any additional stress resulting from cumbersome international litigation in the event of a family break-up.

71. However, the letter received from the Michigan attorney, Jan Rewers McMillan, in connection with the non-return from Austria of a child abducted from Michigan, alleged that Austria was failing to comply with articles 9, 10, 11, 14 and 18 of the Convention on the Rights of the Child. He asked whether it was true, as alleged, that the Austrian legal system provided no effective enforcement mechanism to assure compliance with court orders, with the result that a non-custodial parent's rights were completely unimposable, thereby infringing the provision contained in article 9 of the Convention that a child should maintain direct contact with both parents on a regular basis.

72. He was also concerned about the statement that the legal system in Austria directly linked the payment of child support with a parent's right to have contact with a child and wondered whether a destitute parent would consequently be deprived of access. He hoped that the delegation would respond to those and other disturbing allegations made in the letter.

73. Mrs. KARP asked for details on how children were empowered to participate in the justice system, the educational system and other spheres. With respect to the resolution of the Council of Ministers of the European Union which had been brought to the attention of the Committee, she wished to

know whether the member States were required to allocate funding to provide children with the skills required for participation and, if so, how that requirement was reflected in the budget estimates.

74. In connection with an earlier reply by the delegation, she was concerned that the best interests of the child, who had a right to an identity and to contact with both parents, were not served by the decision that a mother's right to privacy prevailed in the event of a conflict with a child's wish to know the identity of his or her father.

75. In Israel, her own country, much discussion had surrounded the issue of whether children should have access to medical treatment without parental consent. A possible solution might be to set up State establishments in which young people could receive counselling and, where appropriate, treatment without parental consent but with adult support and in safety; it was certainly in the best interests of young people that they should have access to treatment.

76. The question of the age of marriage was not merely one of biological maturity but also involved such questions as personal development and educational achievement, for which reason it would be in the best interests of young women that the age of marriage should be raised. The parents of mentally handicapped children should be given qualified and independent support in reaching a decision regarding the sterilization of such children. She would like to know who was responsible for reviewing the situation of children in care, how often such a review took place and how the use of force or brutality was monitored and prevented in juvenile justice institutions.

77. She would like to be informed why Austria was not a party to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, which accorded closely with Austrian legislation.

78. Mrs. PALME asked whether the discussions mentioned by Mr. Filler regarding the age of sexual consent included homosexual relations. She suggested that the reason that the divorce rate was not higher among women who had married at an early age might simply be that they had had no opportunity to acquire sufficient qualifications or personal independence to permit them to end an unsuccessful marriage.

79. Mrs. OUEDRAOGO, having noted that her question regarding the unequal pay received by women in the private sector had not been answered, urged the Austrian Government to raise the age of marriage so as to ensure that girls were able to complete their normal development. She asked whether new legislation had resolved the problem of the implications for children of the withdrawal of a parent's residence permit. She would also like to know how the telephone helplines for children had been received - suggesting that they might be made free of charge - and how successful the schools for educating parents against violence had proved to be.

The meeting rose at 6 p.m.

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Twentieth session

SUMMARY RECORD OF THE 509th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 January 1999, at 10 a.m.

Chairperson: Miss MASON

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CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of Austria (continued)

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GE.99-40137 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Austria (CRC/C/11/Add.14; HRI/CORE/1/Add.8; CRC/C/A/AUSTRIA/1; CRC/C/Q/AUSTRIA/1; written replies of the Government of Austria to the questions raised in the list of issues) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Austria resumed places at the Committee table.

2. Mrs. MOKHUANE asked why the maximum duration of placement of a minor in a psychiatric institution was longer for a consenting minor than for a minor who was committed against his will, and whether any study had been made into the impact on a child of being committed against his will.

3. She also wished to know what measures were taken to remove the perpetrator of violence in the family from the home and to care for the children who had been the victims of such violence.

4. If she had understood correctly, children born outside wedlock automatically acquired Austrian nationality if their mother was Austrian, but what happened when the mother was foreign and the father was Austrian?

5. Lastly, it would be useful to know whether a study had been made to assess the effectiveness of the programme for the prevention of violence within the community and the family.

6. Mr. RABAH drew attention to the fact that, in its written reply to item No. 6 of the list of issues, on the training of members of various professions on the subject of the provisions of the Convention, the Austrian Government had stated that no specific training programme had been established for judicial staff, but what about for members of other professions such as law enforcement officers, teachers and social workers?

7. Mr. SCHÜTZ (Austria), replying to questions raised at the previous meeting, said that Austria would shortly ratify the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and that the procedure for that purpose was well advanced. Austria had decided upon that course because most of the children adopted in Austria were originally from Romania, which had decided to cooperate in adoption matters only with States parties to that Convention.

8. On the subject of young offenders, no complaints had been received to date regarding ill-treatment by minors held in establishments under the authority of the Ministry of Justice. The experts belonging to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had visited Austria twice and had encountered no cases of violence against young offenders in detention.

9. Where wages were concerned, trade unions and employer associations concluded collective agreements by branch of activity which applied the principle of "equal pay for equal work". Persons who felt that that principle

had been infringed could complain to the bodies responsible for monitoring compliance with that principle. The fact that women on average received lower wages than those paid to men was due to the fact that, in general, they held less-skilled jobs.

10. In regard to the case of Carina Sylvester, the Austrian delegation was of the opinion that the Committee was not competent to consider a communication from a private individual and was therefore surprised that a Committee member should have read out at the previous meeting a letter written by the attorney of Carina Sylvester's father.

11. The CHAIRPERSON acknowledged that the Committee was not competent to receive communications from private individuals. It did not therefore intend to examine the case in question. However, the Committee was interested in the general issues raised by the case in regard to the implementation by the State party of articles 9, 10 and 11 of the Convention.

12. Mr. FULCI clarified that that was indeed the spirit in which he had raised the matter.

13. Mr. SCHÜTZ (Austria) said that, contrary to the allegations of the attorney in question, the mechanisms whereby the Austrian justice system could enforce its rulings in regard to child custody were effective in 99 per cent of cases. In such matters, judges held extensive discretionary powers and could, for instance, when necessary, call in the youth welfare services or the police in order to ensure that the child was returned to the parent to whom custody had been awarded while ensuring that such action was not deleterious to the child. Nonetheless, in some particularly complex cases, it was possible that the procedure followed might not comply fully with the provisions of the Convention.

14. In addition, it was erroneous to state, as alleged in the letter from the attorney, that the Austrian justice system established a direct link between the payment of child support and a parent's right to have contact with the child, or that first instance decisions regarding custody and visiting rights could be appealed again and again. The ruling of the court of first instance could not be altered or overturned unless the circumstances had changed significantly.

15. In all events, the Sylvester case was a strictly bilateral matter that involved only the United States of America and Austria, which were both parties to the Hague Convention on the Civil Aspects of International Child Abduction, and would be settled, if it was so requested by the United States, between their respective ministries of foreign affairs and of justice.

16. In the case in question, if the court order for the child's return had not been executed, it was because the mother had gone into hiding with her daughter and that the child had been untraceable for a very long period. Given the child's psychological state, it was legitimate to wonder whether it was in her interests to separate her from her mother when she had not seen her father for a year and a half.

17. Mr. STORMANN (Austria), replying to Mrs. Karp's question regarding a mother's right not to disclose the identity of her child's father, said that until 1989 it had been up to the youth welfare authority, as the legal guardian of children born out of wedlock, to establish paternity. A law had been adopted in 1989 which made the mother the legal guardian of the child and permitted her to establish paternity, with the assistance of the youth welfare authority. A study carried out in 1993 had concluded that the law, which was very flexible, had proved effective. In that year, 96.5 per cent of the some 20,000 children born out of wedlock had been recognized by their fathers. In only 800 cases had steps been taken to identify the fathers and such action had been successful in two thirds of the situations in question.

18. Mrs. Karp had also asked whether a child had the right to undergo medical treatment in a specialist facility without parental consent. The State could not oblige a child to undergo such treatment without the consent of its legal guardians unless the child's health and well-being were in jeopardy. In such cases, the justice system could entrust the youth welfare authorities with the task of deciding what treatment a child should undergo.

19. In regard to the periodic review of placement, he said that such placement could only take place in very specific circumstances. The mentally ill, as opposed to the mentally handicapped, could be committed to a psychiatric hospital or to the psychiatric service of a hospital with the consent of the legal guardians if the child was under 14 years and with the consent of the legal guardians and of the child if over 14 years. In the latter case, the maximum duration of hospitalization was six weeks, which could be extended to up to a maximum of 10 weeks. If the placement was non-voluntary, it could last up to three months and could be extended to a maximum of one year. If placement took place on a court order, it was up to the court periodically to review the placement order. If placement was decided with the consent of the legal guardians and with the assistance of the youth welfare authorities, then it was up to the authorities to decide whether placement should continue or be terminated. Whenever a child was placed in an institution (school, specialized institution) the authorities were required to monitor the quality of the institution on a regular basis. However, if placement occurred without the involvement of an official authority, for instance, when the legal guardians placed their child with neighbours, the legal guardians were responsible for monitoring the situation. One potentially negative consequence of the law on placement was that it could require the termination of placement when the patient still needed further treatment. The legislation governing placement had been regularly reviewed since its entry into force. A Ministry of Justice commission, composed of psychiatrists, judges, experts and civil servants, was responsible for carrying out an ongoing impact assessment and considering whether the problems encountered in specific cases necessitated amending legislation. Austria had experienced certain problems in connection with the placement of mentally disabled persons, although most cases involved adults. Legislation had indeed been in force for some time and should be reviewed. Efforts had been made to draft a bill covering both minors and adults, but it had proved difficult and the section dealing with adults had had to be abandoned in December 1998.

20. Replying to Mrs. Karp's question on the sterilization of children, he agreed that current legislation gave legal guardians the right to decide on

the sterilization of their minor children who were in care. However, criminal law provided that sterilization was authorized only on pressing medical grounds. Previously, experts had been of the opinion that it was damaging to a mentally ill woman to have the baby to which she had given birth taken away if she had been conscious of her pregnancy. Today, they were more inclined to believe that it was more harmful to sterilize a mentally ill women who was able to understand the nature of pregnancy. Consequently, a new bill provided that the legal guardians could in future consent to the sterilization of their child for medical reasons, but not merely to avoid pregnancy. But that was not a total ban because sterilization sometimes occurred as the result of medically necessary action or treatment.

21. In regard to discrimination against children born out of wedlock, he confirmed that the acknowledgement of paternity by an Austrian citizen did not automatically confer Austrian citizenship. That rule had arisen out of the State's desire to forestall abuse. Austria had many foreigners and had decided that, in order to ensure that children were not acknowledged by "false fathers" in the sole interest of acquiring nationality, it was preferable that nationality should be granted after several years and not automatically.

22. Replying to a question by Ms. PALME, Mr. FILLER (Austria) stated that the intention was not to raise the legal age of sexual consent, which stood at 14 years, but merely to seek better to protect young people in sexual matters.

23. By way of explanation for the late submission of the initial report, he said that the review of all national legislation by independent experts had been an extremely long process. That had, however, been necessary in order to make decision makers aware of the Convention and had allowed attitudes to evolve in recent years. The delay should not therefore be interpreted as a lack of respect towards the Committee. Meanwhile, it was expected that the second periodic report would be ready for submission as planned in September 1999. A number of NGOs and institutions had already been invited to participate in its preparation, and drafting meetings would be organized during the summer of 1999.

24. The Austrian Government considered that it had met its obligation to establish a body responsible for monitoring the implementation of the Convention by setting up a group of independent experts, whose conclusions had been examined by Parliament; in addition, an interdisciplinary group of independent experts was to be established to evaluate the implementation of the Convention in the light of the Committee's recommendations. Meanwhile, the Committee's comments on that approach would be welcome.

25. He said that the Federal Children's and Adolescents' Ombudsman had been established in 1991. It had been a long and arduous task to achieve the establishment of ombudsmen in all the Länder and then to harmonize the working methods of the ombudsmen of the Länder with those of the Federal Ombudsman. Efforts to achieve that end were continuing. A survey had revealed that Austrian children were familiar with their rights, for instance the right to privacy and to respect for the secrecy of correspondence. In the event of a violation of that right, by parents for example, children could submit a complaint and inform the ombudsman.

26. Replying to Mrs. Karp's question on the resolution adopted in November 1998 by the European Union's Council of Ministers on the participation of young people, he said that it had not been easy to come up with even a basic text. The matter of funding had not been explicitly laid down in the resolution because Member States had been of the opinion that the matter should be decided by individual States, although it was clear that funding would have to be made available if the resolution was to be implemented. He welcomed the large number of telephone hotlines enabling children to contact NGOs, ombudsmen, religious organizations, etc., but considered it regrettable that they were not manned 24 hours a day. It might well be possible to improve the service by placing the different hotlines on a network. On the subject of violence, one study had been carried out in 1977, another in 1992 and a third was currently under way, 10 years after the entry into force of the law prohibiting violence within the family; the report would review all forms of violence and the different measures that existed to combat them. Lastly, nobody under the age of 18 could be called up for military service. While boys could voluntarily perform military service from the age of 17, they could under no circumstances be sent into combat in time of war. Girls could not under any circumstances enter the army before 18 years of age.

27. In reply to a question by Mr. FULCI, Mr. SCHÜTZ (Austria) estimated that at least 350,000 brochures - which featured the text of the Convention - had been directly distributed to citizens and all Austrian children had received a copy. A number of NGOs had also launched campaigns to publicize the Convention.

28. In regard to training, the federal authorities had, for instance, provided training for the staff responsible for implementing programmes to combat violence.

29. In regard to juvenile justice a specific law existed with the prime objective of avoiding prison sentences for young people.

30. He himself had taken part in seminars to familiarize judges and other judicial staff with the Convention.

31. In reply to a question on teacher training, Mrs. KISSER (Austria), said that the Ministry of Education and Cultural Affairs was divided into seven departments, one of which was specifically responsible for monitoring compliance with child rights. Information was disseminated in different ways, including brochures, the organization of seminars for teachers, parents and children, and on the Internet. A telephone line was manned from 8 a.m. to 8 p.m. for children to ask questions on any matters of concern.

32. The CHAIRPERSON invited the members to ask their last questions or to make their final comments.

33. Mr. KOLOSOV considered it regrettable that, while the overall situation was positive, the number of child suicides should be increasing constantly. Had studies been conducted into that alarming phenomenon? What preventive measures did the authorities intend to take?

34. Mrs. KARP thanked the members of the delegation for their informative replies. Referring to one such reply, she was of the view that children should be permitted to consult a doctor without prior parental consent and that the authorities should consider introducing a system which established a fair balance between the rights of parents and the rights of children. Certain other questions, however, had not been dealt with. For instance, she would like to have some examples of court rulings based on the provisions of the Convention. Was provision made for child participation in institutions other than schools (institutions for handicapped children, for example)? Did a guarantee exist of equitable access to protection services for all children who had been the victims of violence? In that connection, she suggested that children who used the telephone hotline that had been set up for them should be channelled directly to the reception services closest to their home. She asked whether special programmes had been introduced with a view to teaching children how to participate in running their school or the institution in which they lived. She wondered what obstacles had been encountered by the bill to make the age of consent for homosexual relations the same for boys as for girls. Did a mechanism exist in placement institutions for periodically reviewing the justification for children's presence there and for transferring them, where appropriate, to another reception structure? Given that statistics indicated that only 30 per cent of disabled children attended ordinary schools, she asked whether measures had been taken to improve that proportion. On the subject of sex education at school, she asked whether it had been demonstrated that teachers were best placed to introduce the subject to their pupils and whether it would not be better to entrust that task to specialist teachers. What subjects were discussed by student representatives with the officials of the Ministries of Education and Cultural Affairs?

35. The Committee would be interested in receiving statistics on the number of children in prison and in pre-trial custody, the nature of the offences committed and the corresponding sentences. The delegation had stated that there were two juvenile courts in the entire country and she wondered whether the judicial staff of the other courts included judges with special training in the area of juvenile justice. Had the Austrian authorities considered introducing the family group conference system or "family council" in place of traditional sentences? Such a system had been adopted in many Western countries, with very good results, since it allowed young offenders to be monitored within the family and made parents responsible for them. The Committee also wished to know how the rights of offenders under 14 years of age were guaranteed and whether they were represented in the judicial proceedings involving them, even if the case did not go to court.

36. Did the recent changes in legislation which had made prostitution a punishable offence include penalties for the clients of prostitutes under the age of 18 years? Such a measure was all the more necessary since the age of sexual consent was 14 years for girls. Why was the fact of giving children access to premises in which they could engage in prostitution considered merely as a misdemeanour and not as an offence? Was there any ban on disseminating the addresses of child prostitutes? Did any programme exist for children in the nature of the programme intended primarily to protect the victims of the traffic in persons that had been established under the auspices

of the Ministry of the Interior? What solution had been adopted by the authorities to rehabilitate victims in preference to expelling them immediately to their country of origin where they would be in danger?

37. Mrs. OUEDRAOGO drew attention to the reference in the report to the financial assistance that was granted to university students with low-income parents. Was such assistance available to needy primary and secondary school children? Paragraph 386 of the report stated that, under the Government's "austerity plan", parents were to be asked to make a financial contribution to cover the cost of textbooks. It would be interesting to know whether low-income children would be exempted from paying that contribution. In regard to human rights education, it had been stated that the different provisions of the Convention were taught separately and that children were perhaps not familiar with the Convention as a whole. It would therefore be desirable to recommend that the provisions should be placed back in their context so as to offer a global understanding of the Convention and to convey its multidisciplinary nature.

38. She congratulated the Austrian delegation on its report which she had found to be easy to consult, clear and comprehensive. She had taken note of the considerable progress that had been achieved by the State party and urged it to continue on that course. She would however like it to examine the reservations it had entered, with a view to withdrawing them. She also stressed that the State party should achieve closer coordination in the implementation of the Convention which did not appear to be viewed from a holistic angle.

39. Ms. PALME considered that the 1.4 fertility rate in Austria was far too low for a modern society. Given the substantial social benefits granted to parents, it was permissible to wonder as to the real reason why families had so few children. Perhaps the general climate was not as flexible or generous as it was made out to be. The report contained no statistics on breastfeeding or on the number of women who stayed at home to raise their children. Parental leave appeared to be very short (only a few months). At all events, a low fertility rate indicated the existence of difficulties in raising children and it would be interesting to receive additional information on the subject.

40. It would also be helpful to learn more about the follow-up devoted to the Convention, at the level both of the Länder and of the Federation as a whole. That was particularly important for monitoring the situation of disabled children or children from socially or psychologically vulnerable families belonging to particular minorities, such as the Roma ethnic group. It would also be interesting to have more comprehensive information on the follow-up to the World Congress against the Commercial Sexual Exploitation of Children and to know whether an action plan had been launched in that connection. The work that had been done for children in conflict with the law was excellent. Nonetheless, 200 child incarcerations per year was an excessively high number. In preference to incarceration, children should be provided with some sort of support system when they came into conflict with the law.

41. Mrs. MOKHUANE congratulated the State party on its mother and child health-care system, which offered virtually universal coverage; however, what was done for the 4 per cent of mothers who were not covered by the system? She requested more information on the situation of children with AIDS. In regard to the pilot study on sex education provided in partnership with parents, which was to be implemented nationally, what was the reaction of the parents involved? What were children's feelings on that subject and what criteria was the decision to implement the experiment at the national level based on? While schooling was obligatory, where the drop-out rate was concerned, no statistical break-down by sex was available. How was article 29 of the Convention implemented in schools, given the xenophobia that clearly existed in Austria? Since children were permitted to work from the age of 13, was there not a risk that they might be exposed to pornography in certain occupational environments, particularly the press? She would be interested to know what was done to protect children in such situations. She would also like to know whether the principle of the right to leisure and recreation (article 31 of the Convention) was respected as fully in towns as in the country.

42. Mr. FULCI noted that in 1995 Austria had signed the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, but had not yet ratified it. It was stated in paragraph 252 of the report that Austria had signed a number of bilateral agreements in that sphere and he asked what obstacles had been encountered at the multilateral level.

43. The State party had been very frank in admitting, in paragraph 373 of its report, that a large number of children in Austria lived on the edge of poverty, confirming a trend that was not confined to developing countries but affected even the most prosperous nations. In the view of the Committee, it was essential that any reform of the welfare state should not lose sight of the protection of the best interests of the child. According to data provided by a number of NGOs, it would appear that 200,000 young people in Austria lived in poverty or on the edge of poverty, 20 per cent of whom were under 15 years of age. If those figures were accurate, he invited the Austrian delegation to give an explanation.

44. In the light of paragraph 491 of the report which stated that the protection of children and adolescents from economic exploitation and work which could impair their health and development was ensured by international agreements, as well as by a series of domestic laws and regulations, it might be asked why Austria had not yet acceded to ILO Convention No. 138 on the minimum age of admission to employment.

45. An NGO had informed the Committee that some 50 under-age refugees were being held in Austria pending expulsion and that they might remain in prison for up to six months without having committed or been found guilty of any offence. What was the minimum age at which a minor could be incarcerated in Austria?

46. Mrs. KARP expressed the hope that the State party would withdraw its reservations to the Convention. She commended the stance that had been adopted regarding corporal punishment within the family and wondered whether

Austria would be prepared to share its experience with other countries which were somewhat reluctant to introduce such progressive legislation in that sphere. In regard to the independent body that had been established to monitor the implementation of the Convention, it might be of interest to ensure that children were included and that their point of view was taken into consideration. She had received the impression from the discussions that the State party had spared no effort in implementing the Convention as thoroughly as possible; however, it was a continuous process where there was always room for improvement and she hoped that Austria's current efforts would not flag. She likewise hoped that the delegation's discussions with the Committee would be widely publicized.

47. Mr. RABAH asked Mr. Siedler, the young member of the Austrian delegation, whether his numerous activities left him time for leisure and recreation. How did Austrian children spend their free time and were government programmes for school-age children in that sphere adequate?

48. The CHAIRPERSON, summarizing the discussion on the initial report of Austria, said that it was one of the best that the Committee had ever examined. That was no doubt due to the healthy economic climate in Austria and to the fact that the report had been drawn up in accordance with the Committee's guidelines and provided much useful information. However, given that nothing was perfect and human nature being what it was, the members of the Committee would always find something to criticize. For instance, one member had considered it regrettable that the Austrian delegation had not included a representative of the executive branch. She herself agreed but acknowledged that the members of the delegation had performed their task in an exceptionally competent manner. She drew attention to comments regarding the reservations to the Convention and its hierarchical position in the Austrian legal order. While the ombudsman system as it stood was commendable, it might be made more consistent by placing all ombudsmen on an equal footing. Likewise, it might be desirable to allocate the necessary resources to the federal coordination mechanism in order to ensure that it could satisfactorily carry out the tasks ensuing from the implementation of the Convention. Concerns had also been expressed regarding the age of marriage: although it was still higher than in some other countries, nonetheless it might be expected to have repercussions not only in terms of education and health but also in regard to the responsibilities that must be assumed by young couples. Considerable attention had also been devoted to children's access to medical consultations. The Committee acknowledged that the general principles of the Convention were respected but wished to make it clear that it was concerned not so much by social considerations, i.e. the well-being of the child, but by the manner in which all aspects of a child's life were protected and by the matter of the child as a subject of law. The question of discrimination had barely been touched on, but it should be borne in mind that some minorities, for instance the Roma and the Sinti ethnic groups, were severely disadvantaged in European societies, although the corresponding authorities might deny that was so. Austria was no exception and should be particularly attentive to the matter of integrating those minorities. Another cause for concern was the question of general access to information where there was a risk that children might be exposed to pornography. That issue was connected with the age of sexual consent and the risk that young people aged 14 to 18 might become

involved in pornographic activities. She urged the State party not to rest on its laurels and not to lose sight of the fact that the protection of child rights was an ongoing process requiring regular reporting to the Committee.

49. Mr. SCHÜTZ (Austria) thanked the members of the Committee for the spirit of understanding with which they had examined Austria's report and assured them that he had given the closest attention to all their comments. He thanked the Chairperson for her concluding observations and words of encouragement to his delegation, which was fully committed to continuing its work to improve and promote the rights of the child in Austria. He wished to emphasize that the Convention was implemented on the basis of its substance, so that the matter of its position in the hierarchical order of legal texts was of secondary importance. The Committee's observations regarding the disparity in the legal age of marriage for girls and for boys would be taken into account. Austria had already offered to share with other States its experience in the abolition of corporal punishment and he had personally participated in bilateral seminars on that subject. Owing to shortage of time, the Austrian delegation suggested that it might reply in writing to the other questions raised by the members of the Committee before it adopted its concluding observations.

50. Mr. SIEDLER (Austria) said that he considered the situation of Austrian children in regard to leisure and recreation to be satisfactory. Although his student representation activities occupied a lot of his time, he viewed them as a hobby rather than work. He said that schools had councils composed of an equal representation of parents, teachers and pupils and chaired by the school director which served as discussion groups and in which pupils felt themselves to be on an equal footing with adults. More importance should, however, be given to political education; discussions on that subject were being held with the Ministry of Education and Cultural Affairs.

The meeting rose at 1.05 p.m.